

BOIES, SCHILLER & FLEXNER LLP  
 RICHARD J. POCKER (NV Bar No. 3568)  
 300 South Fourth Street, Suite 800  
 Las Vegas, NV 89101  
 Telephone: (702) 382-7300  
 Facsimile: (702) 382-2755  
 rpocker@bsfllp.com

BOIES, SCHILLER & FLEXNER LLP  
 STEVEN C. HOLTZMAN (*pro hac vice*)  
 FRED NORTON (*pro hac vice*)  
 KIERAN P. RINGGENBERG (*pro hac vice*)  
 1999 Harrison Street, Suite 900  
 Oakland, CA 94612  
 Telephone: (510) 874-1000  
 Facsimile: (510) 874-1460  
 sholtzman@bsfllp.com  
 fnorton@bsfllp.com  
 kringgenberg@bsfllp.com

BINGHAM MCCUTCHEN LLP  
 GEOFFREY M. HOWARD (*pro hac vice*)  
 BREE HANN (*pro hac vice*)  
 THOMAS S. HIXSON (*pro hac vice*)  
 KRISTEN A. PALUMBO (*pro hac vice*)  
 Three Embarcadero Center  
 San Francisco, CA 94111-4067  
 Telephone: 415.393.2000  
 Facsimile: 415.393.2286  
 geoff.howard@bingham.com  
 thomas.hixson@bingham.com  
 kristen.palumbo@bingham.com

DORIAN DALEY (*pro hac vice*)  
 DEBORAH K. MILLER (*pro hac vice*)  
 JAMES C. MAROULIS (*pro hac vice*)  
 ORACLE CORPORATION  
 500 Oracle Parkway  
 M/S 5op7  
 Redwood City, CA 94070  
 Telephone: 650.506.4846  
 Facsimile: 650.506.7114  
 dorian.daley@oracle.com  
 deborah.miller@oracle.com  
 jim.maroulis@oracle.com

Attorneys for Plaintiffs Oracle USA, Inc.,  
 Oracle America, Inc., and Oracle International  
 Corp.

SHOOK, HARDY & BACON LLP  
 B. Trent Webb (*pro hac vice*)  
 Eric Buresh (*pro hac vice*)  
 2555 Grand Boulevard  
 Kansas City, Missouri 64108-2613  
 Telephone: (816) 474-6550  
 Facsimile: (816) 421-5547  
 bwebb@shb.com  
 eburesh@shb.com

Robert H. Reckers (*pro hac vice*)  
 600 Travis Street, Suite 1600  
 Houston, Texas 77002  
 Telephone: (713) 227-8008  
 Facsimile: (713) 227-9508  
 rreckers@shb.com

GREENBERG TRAURIG  
 Mark G. Tratos (Nevada Bar No. 1086)  
 Brandon Roos (Nevada Bar No. 7888)  
 Leslie Godfrey (Nevada Bar No. 10229)  
 3773 Howard Hughes Parkway  
 Suite 400 North  
 Las Vegas, NV 89169  
 Telephone: (702) 792-3773  
 Facsimile: (702) 792-9002  
 tratosm@gtlaw.com  
 roosb@gtlaw.com  
 godfrey1@gtlaw.com

Attorneys for Defendants Rimini Street, Inc.,  
 and Seth Ravin

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ORACLE USA, Inc., a Colorado corporation;  
ORACLE AMERICA, INC., a Delaware  
corporation; and ORACLE INTERNATIONAL  
CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;  
and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

**JOINT CASE MANAGEMENT  
STATEMENT**

DATE: March 29, 2011  
TIME: 10:00 a.m.  
PLACE: Courtroom 3B  
JUDGE: Magistrate Peggy A. Leen

Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corp. (collectively, “Oracle” or “Plaintiffs”) and Defendants Rimini Street, Inc. (“Rimini Street”) and Seth Ravin (“Ravin”) (together, “Rimini” or “Defendants”) jointly submit this Case Management Conference Statement in advance of the March 29, 2011 Case Management Conference (“CMC”) to provide the Court with a status report of the pending matters.

After a joint statement regarding the current status of the pleadings (Part I) and discovery (Part II), the parties present in Part III their respective positions regarding Oracle’s request for an extension of the current discovery schedule and deposition limits, which Rimini opposes.

**I. STATE OF THE PLEADINGS**

Both parties have answered the claims that have not been dismissed.

Through discovery in this case, Oracle has obtained evidence that Defendants have downloaded and made copies of multiple versions of Oracle’s Relational Database Management System software. As Oracle believes this evidence supports allegations of (at least) copyright infringement, computer fraud, breach of contract, and inducement of breach of contract, it intends to amend its Complaint to add allegations relating to this conduct. Oracle has provided the proposed Second Amended Complaint to Rimini for review prior to filing, and based on that review Rimini will consider stipulating to the amendment. The Court’s current Discovery Plan

1 and Scheduling Order sets June 1, 2011, as the last date to amend the pleadings. 9/21/2010  
2 Order, Dkt. 109, at 5.

3 **II. DISCOVERY PROGRESS**

4 Since the last scheduled Case Management Conference of January 25, 2011, the parties  
5 have made the following progress in discovery:

6 **A. Discovery From and Produced By Plaintiffs.**

7 **Documents.** Rimini Street has served three sets of Requests for Production, with a total  
8 of 105 separate requests. Since the January 25, 2011 CMC, Rimini has served its third set of  
9 Requests for Production, which includes nine separate requests. The negotiations between the  
10 Parties concerning search terms, discussed in the last Joint Case Management Statement, were  
11 not completed until February 9. Between January 25 and the submission of this statement,  
12 Oracle has produced more than 22,700 pages of documents, including software development  
13 documentation; Oracle partner documentation; deposition transcripts and exhibits from the  
14 Oracle-SAP litigation; and, documents from 12 Oracle custodians. Oracle continues to review  
15 documents of the agreed production custodians (including server emails, laptop/desktop images,  
16 and documents from network share files), as well as additional customer contracts and related  
17 documents.

18 Additionally, at Rimini's request, Oracle has agreed to prioritize the production of five  
19 custodians' documents. At the time of this submission, production of two of these priority  
20 custodians is complete, and Oracle expects to complete the production of the other three priority  
21 custodians by April 1, 2011. Oracle expects to make significant rolling productions of the other  
22 non-priority custodial documents on an ongoing basis.

23 **Interrogatories.** Oracle has responded to Rimini's first set of Interrogatories, numbered  
24 1 through 12. On March 4, 2011, Rimini served a second set of Interrogatories, numbered 13  
25 and 14. The parties have agreed that Oracle shall respond to the second set of Interrogatories by  
26 April 15. Oracle expects that it may further supplement its response to Interrogatory No. 3 at the  
27 same time it responds to the second set of Interrogatories.

1        **Depositions.** Rimini has noticed five depositions of Oracle witnesses, including one  
 2        30(b)(6) deposition, for dates in April and May. Further depositions by Defendants must await  
 3        the completion of custodian productions. Rimini has not yet taken any depositions.

4        **B.        Discovery Sought From and Produced By Defendants.**

5        **Documents.** Oracle has served three sets of Requests for Production on Defendant  
 6        Rimini, with a total of 57 separate requests, and one set of Requests for Production on Defendant  
 7        Ravin, with a single request. Since the January 25 CMC, Oracle has served its third set of  
 8        Requests for Production on Rimini Street, with a total of seven separate requests. Oracle has not  
 9        served any additional Requests for Production on Defendant Ravin since January 25.

10        To date, Defendants have produced approximately 95,000 documents totaling nearly 1.5  
 11        million Bates-numbered pages. In addition, Defendants have produced 2,750 files in native  
 12        format. Defendants plan to make up to two additional productions in the next few weeks, which  
 13        will likely bring Rimini's total production to over two million pages by early April. Documents  
 14        produced include client contracts, correspondence and emails between Rimini Street and its  
 15        clients, documents regarding policies and procedures related to Rimini Street's business  
 16        activities, documents related to investments in Rimini Street, documents related to maintenance  
 17        end dates and download authorizations, documents related to onboarding, documents related to  
 18        extraction tools, and documents related to customized fixes and tax and regulatory updates.

19        **Data.** The parties continue to make progress in negotiating and obtaining the production  
 20        of several types of Rimini data.

21        Below is a description of the data that Rimini has produced thus far:

22        1.        Rimini Street maintains an FTP server that contains Oracle software and support  
 23        materials, including fixes and updates generated from Oracle software by Rimini Street. Rimini  
 24        Street permits its customers to download these materials from the FTP server. On December 23,  
 25        2010, Rimini Street produced a copy of its FTP server, containing 19,127 directories and 225  
 26        gigabytes of data.

1           2.       Rimini Street's environments consist of locally installed versions of Oracle  
2 software, most of which are labeled with specific customer names. In many cases, Rimini Street  
3 modifies these environments as part of its business process. Oracle's position is that Oracle  
4 requested production of all environments in October 2010, but agreed to prioritize a subset of  
5 environments for initial production. On December 14, 2010, Oracle requested the environments  
6 associated with 12 customers, and Rimini Street made its first production of environments on  
7 February 11, 2011, which included 51 environments totaling 2.5 terabytes. On February 7,  
8 Oracle requested the environments associated with seven more customers. On March 2, Rimini  
9 produced the 21 environments associated with those customers, an additional 1.3 terabytes of  
10 data.

11           3.       DevTrack is a software program with which Rimini Street manages the creation  
12 of certain fixes and updates, including those that Rimini Street generates from locally maintained  
13 copies of Oracle software and then delivers to its customers. DevTrack includes records for  
14 nearly 2,000 fixes and updates. Each record contains some workflow information and often  
15 includes attachments, such as functional and technical specifications, testing documents, and  
16 other information. Defendants have not produced DevTrack, instead permitting only read-only  
17 access through a Virtual Private Network (VPN) that allows Oracle to view the available data  
18 without modifying it. To perform off-line analysis, Oracle must individually print every screen  
19 and save every attachment of interest. Rimini Street provided one login credential for VPN  
20 access on December 10, 2010, and provided one additional login credential on March 11, 2011.  
21 These two credentials can be used in the alternative to access the customer archives discussed  
22 below, but only one person can use each of them at a time. On February 25, 2011, Rimini Street  
23 agreed to re-designate most attachments and some additional information contained within each  
24 DevTrack record as Confidential; the remainder retains a Highly Confidential designation, which  
25 means Oracle cannot share that information with the Oracle technical employees assisting with  
26 the litigation.

1           4.     WSS logs track Rimini Street engineers' access to certain Oracle software and  
2 support materials, including changes to environments. Rimini Street produced data exported  
3 from the WSS logs on November 19, 2010. After Oracle's initial analysis showed that the set of  
4 exported data was incomplete, Rimini Street agreed to produce the full logs in native format.  
5 Rimini Street produced the native WSS logs on January 26, 2011.

6           5.     Rimini Street's IT ticketing requests track certain Rimini Street employees'  
7 access to Oracle's password-protected customer support websites. Rimini Street produced Excel  
8 files of its IT ticketing system on November 17, 2010.

9           6.     Rimini Street's archives contain Oracle software and support materials as well as  
10 Rimini Street-created log files and other data. The archives comprise over 22 terabytes of data.  
11 Rimini Street has provided read-only VPN access to the archives and has produced some  
12 metadata associated with the archives, but has not produced any actual archives. Rimini Street  
13 provided Oracle with one login credential for VPN access on December 10, 2010 and provided  
14 four additional login credentials on March 11, 2011. Two of these credentials can be used in the  
15 alternative to access DevTrack, described above.

16           7.     Rimini Street's HRMS Development Share is a location on Rimini Street's  
17 network where Rimini Street stores updates for PeopleSoft software before distributing them to  
18 customers. Oracle first requested production of the contents of this folder on February 10, 2011.  
19 Rimini Street has thus far produced the files corresponding to the six software fixes that were the  
20 subject of Oracle's February 8, 2011, Third Notice of Deposition Pursuant to Fed. R. Civ. P.  
21 30(b)(6). Rimini expects to produce the remaining material Oracle has requested from the  
22 HRMS Development Share in April.

23           **Interrogatories.** Plaintiffs have served three sets of Interrogatories, consisting of 18  
24 separate interrogatories, to which Defendants have responded.

25           **Depositions.** Plaintiffs have taken two depositions of Defendants since the last  
26 scheduled Case Management Conference. On March 15, 2011, Oracle deposed Rimini Street  
27 employee J.R. Corpuz, who coordinates the "onboarding" process for new Rimini Street clients  
28

1 that use PeopleSoft. On March 17, 2011, Oracle completed a Rule 30(b)(6) deposition of Rimini  
2 Street employee Beth Lester concerning Rimini Street's development and delivery of six specific  
3 PeopleSoft fixes and on the topic of certain "development environments" used by Rimini Street  
4 to support various customers. Plaintiffs have noticed three more depositions of Rimini Street  
5 employees for April and early May. Further depositions by Plaintiffs must await the completion  
6 of custodian productions and the production of additional data as described above.

## 7 **C. Third Party Discovery**

### 8 **1. Customers**

9 Since January 25, Oracle has served subpoenas on approximately 87 of Rimini Street's  
10 customers (including subpoenas Oracle anticipates will have been served by March 25). Oracle  
11 has received approximately 62 document productions in response to these and prior-served  
12 subpoenas. Oracle's effort to process, review, and produce these productions to Rimini Street is  
13 ongoing.

14 The subpoenas served since January 25 seek the same information as the customer  
15 subpoenas served prior to January 25: documents concerning several subjects related to Oracle's  
16 claims, such as how Rimini Street provides software and support materials to that customer,  
17 whether Rimini Street uses unauthorized crawlers or scrapers to obtain Oracle software for that  
18 customer, agreements between the customer and Rimini Street that Rimini Street contends in its  
19 answer authorize some or all of its conduct, customer login credentials that Rimini Street used to  
20 access Oracle's computer systems, and whether the customer provided Rimini Street with Oracle  
21 source code or installation media. Together with the subpoena, Oracle has served each customer  
22 with a copy of the protective order in this action, in the event that the customer believes  
23 responsive documents may be confidential.

### 24 **2. Public Entities**

25 As of January 21, Oracle had made state "sunshine act" requests of forty-five public  
26 entities that may have had significant contact with Rimini Street. Forty of these entities have  
27 responded with substantive productions or statements that they had no responsive documents.  
28



1 Since January 21, Oracle has served subpoenas on the five non-responsive entities and issued a  
2 sunshine act request to one additional entity.

3 As explained in the last CMC statement, Oracle and Rimini Street have agreed that the  
4 protective order will govern sunshine act productions. The parties' review of the sunshine act  
5 materials is ongoing.

### 6 **3. Rimini Street Investors**

7 Oracle continues to negotiate with Adams Street Partners concerning the objections to  
8 Oracle's subpoena that Adams Street Partners served on June 25, 2010. Since November 30, the  
9 parties have met and conferred and reached general agreement on the terms of a production,  
10 which is expected shortly.

### 11 **4. Other Third Parties**

12 Since January 25, Oracle has served subpoenas on Rimini Street competitors Spinnaker  
13 Support, CedarCrestone, and netCustomer. Rimini Street served subpoenas on these companies  
14 soon after Oracle did. Oracle has to date received no response from netCustomer and is  
15 negotiating with Spinnaker Support and CedarCrestone with respect to their objections.

16 No other third party discovery has been conducted to date.

## 17 **III. The Discovery Schedule and Limits**

### 18 **A. Oracle's Position**

19 While the parties have been working diligently and cooperatively, Oracle has concluded  
20 that the current schedule and deposition limits are insufficient to complete necessary discovery  
21 and prepare expert reports. For four reasons, Oracle requests an extension of the case schedule  
22 and the current deposition limits:

- 23 • First, the parties' efforts to stage discovery – undertaken to achieve efficiency and  
24 reduce burdens – have largely been successful, but have slowed the process. As a  
25 result, Rimini Street has yet to produce important, voluminous categories of  
26 technical data and custodian documents.
- 27 • Second, the volume and related necessary analysis eclipse what Oracle expected.  
28 Separate analysis is required for each of at least three separate aspects of Rimini  
Street's conduct: downloading of Oracle material; creating and copying of  
operating installations of Oracle software (called environments); and distribution  
to customers of changes to Oracle software (called fixes or updates). Each  
involves different voluminous data, different personnel, and different business



documents.

- Third, Oracle's experts require time to help guide this fact discovery process but also to analyze the mounting volumes of data produced by Rimini Street.
- Fourth, the additional time and depositions will not unduly prejudice Rimini but the current schedule and limits will prejudice Oracle. The scope of Rimini's infringement directly relates to Oracle's damages. On the current schedule, Rimini would depress damages and keep the full scope of its actual conduct from coming to light for no reason other than Rimini chose to make as many copies it did and to keep its records in the condition it did. (As explained below, for example, Rimini has a policy of altering certain code files to remove the automatically generated reference in them to the software used to create the file. These tactics complicate Oracle's investigation).

Below, Oracle explains these obstacles that it faces with reference to the illustrative categories of Rimini Street's conduct (the fix analysis and Rimini Street's downloading activities). Oracle then maps out the depositions that it currently expects to need, with the caveat that Rimini has produced only a fraction of its custodian documents and so these projections may change over time. Although these proposed depositions exceed the limits previously ordered by the Court, they represent a small percentage of the available percipient party-witnesses population. Even without these additional depositions, Oracle would still need the additional time it seeks just to receive and analyze the Rimini data. In support of this point, Oracle submits as **Exhibit A** a declaration from one of Oracle's experts, Christian Hicks of Elysium Digital, L.L.C.

To be clear, Oracle does not expect, or seek, discovery on every environment, every fix, or from every developer at Rimini who likely acted improperly. As explained below, however, even to develop statistical evidence of Rimini's conduct based on populations samples, Oracle needs the time and tools to investigate Rimini's downloading and fix development across multiple product lines, over multiple years, and still leave room for crucial third party and non-technical discovery.

There is no dispute that Rimini's business model is based on copying terabytes of Oracle's copyrighted intellectual property. Indeed, in its answer to the operative complaint, Rimini freely admits copying "potentially tens of thousands of files for a single customer." Answer ¶ 26. The fundamental dispute between the parties is not whether massive copying has

1 occurred, but rather, whether Rimini's admitted copying is lawful. Rimini should not be  
 2 permitted to avoid an adjudication on the merits by arguing, in effect, that Rimini has taken so  
 3 much Oracle intellectual property that there is insufficient time to complete an analysis of the  
 4 propriety of Rimini's copying and use of Oracle's intellectual property.

### 5 **1. Oracle's Copyrighted Software and Rimini Street's Practices**

6 To understand the complexity involved and the discussion that follows, Oracle submits  
 7 this summary of the underlying issues.

8 Oracle alleges that Defendants have infringed 105 of its registered copyrights. First  
 9 Amended Complaint, Dkt. 36, ¶ 74. These copyrights relate to three different product lines of  
 10 Oracle's enterprise software applications: PeopleSoft, J.D. Edwards and Siebel.<sup>1</sup> Each product  
 11 line contains several different versions of multiple, separately licensed products. For example,  
 12 PeopleSoft includes PeopleSoft human resources software (HRMS), financials, and other  
 13 products, each of which has multiple versions over time (*e.g.*, 7.0, 7.5, 8.0, etc.) An installation  
 14 of any version of any of these product lines creates an "environment."

15 Enterprise software applications are complicated systems that run enterprise-level  
 16 business tasks. An example of these tasks would be the human resources module for a global  
 17 company with tens of thousands of employees. The payroll function alone requires the accurate  
 18 processing of tax withholding, family and medical leave, vacation accruals and any number of  
 19 other modifications and deductions in compliance with the laws and regulations of hundreds of  
 20 local, state, and national jurisdictions. Each such module – human resources, financials,  
 21 customer relationship management, etc. – involves thousands of "objects." These objects are  
 22 computer programs, files, and database tables containing code, scripts, metadata, or data that are  
 23 all essential for the software properly to function.

24 Rimini Street regularly reproduces, modifies, and distributes copies of Oracle's  
 25 copyrighted software. For just the PeopleSoft product line, upon which Oracle's limited  
 26

27 <sup>1</sup> As discussed above, Oracle seeks to amend the complaint to add registrations for a fourth  
 28 product line, Oracle Database.

1 discovery to date has focused, Rimini Street does this in a number of ways: by downloading  
2 Oracle's install media or copies of objects that Oracle created (software and support materials);  
3 by modifying the objects that Oracle created and distributing files that contain the modified  
4 objects to customers; and by creating files that will modify the source code, metadata, or data in  
5 a PeopleSoft database, distributing those files to customers, and applying those files to the local  
6 PeopleSoft environments on its servers. Rimini Street refers to these files that contain objects  
7 and modify local environments as "fixes" or "updates."

8 As a result of Rimini's extensive use of Oracle software, copies of Oracle's copyrighted  
9 PeopleSoft, J.D. Edwards, and Siebel software and support materials, and of the media used to  
10 install that software, are found throughout Rimini Street's computer systems. Because Rimini  
11 Street has denied that it has infringed Oracle's copyrighted software, Oracle must discover,  
12 catalog, and evaluate the copies that it finds. As Rimini Street has asserted a license defense,  
13 discovery may also include analysis of whether Rimini Street's copying and use of this Oracle  
14 software are covered by the licenses between Oracle and its customers on which Rimini Street  
15 relies.

## 16 **2. Oracle's Diligent Conduct of Discovery, Information Yet to Be Produced,** 17 **and Analysis to Be Performed**

18 As described above, the parties have worked cooperatively to facilitate the production of  
19 many types of information, both custodial (*i.e.*, from the files of individual employees) and non-  
20 custodial (*i.e.*, from large centralized databases and other sources), without requiring any  
21 intervention from the Court. Many of the negotiated resolutions of discovery issues have  
22 reduced the burden on Rimini Street but have also lengthened the time required to produce  
23 important information. In several instances, for example, instead of producing all of a certain  
24 type of data requested, Rimini Street has provided preliminary or summary information to  
25 Oracle, which Oracle has analyzed and used to make more targeted discovery requests for  
26 production. As a result, Rimini Street has yet to produce important data. By Rimini's own  
27 estimation in its separate section below, it has produced over 2 million pages of documents for  
28

just one completed custodian and a handful of incomplete ones. That illustrates the coming volume and also undermines the notion that Oracle could effectively analyze all of those future productions, and all of the other technical data, in what would then be the three remaining months of discovery (if Rimini keeps to the schedule it advertises below). Indeed, Once Rimini Street produces the data, the expert analysis – including depositions necessary for understanding the data – will take substantially more discovery and time than the current schedule permits. We discuss below four examples by describing an issue, the data relevant to that issue that remains for Rimini Street to produce, and the analyses that technical experts will have to perform with the produced data. We also refer the Court generally to the Hicks Declaration, attached as **Exhibit A** to this Statement.

Rimini’s attacks on Oracle’s diligence in seeking information from Rimini lack merit. Oracle propounded document requests at the earliest possible date – April 29, 2010, nearly 13 months ago – and every single document and data set that Rimini says it has yet to produce is responsive to those requests. Rimini does not contend otherwise. Yet Rimini’s argument below implies that despite these requests, it need not produce any data set unless Oracle specifically identifies it and asks for it. That is wrong. Rimini must identify and produce relevant and responsive data sets without such specific requests. As shown below, to speed discovery, Oracle has asked Rimini to prioritize the production of certain data sets and documents, but has never withdrawn its broader requests. Repeatedly, as shown below, in the course of discovery Oracle has identified additional, important unproduced and even unidentified data, and promptly requested their prioritization as soon as Oracle learned of it.

#### **a. Rimini Street’s Distribution of Fixes and Updates**

As discussed above, Rimini Street distributes software fixes and updates. All of these fixes and updates, when applied to a local environment, modify that environment in significant ways, most frequently as “tax and regulatory updates,” which adjust the software so that it performs its functions in compliance with ever-changing tax rules and regulations from local, state, and federal authorities. The most significant portion of Rimini Street’s business is its

1 distribution of tax and regulatory updates for Oracle's PeopleSoft-branded human resources  
2 software. All or virtually all of these fixes and updates contain copies of modified versions of  
3 objects from Oracle's copyrighted software, contain files created through the use of Oracle's  
4 copyrighted software, or both. Rimini Street has created and delivered over 1,000 fixes and  
5 updates to its customers, each consisting of one or more versions of between approximately 1  
6 and 30 objects modified from original Oracle code or generated using Oracle software. It is  
7 reasonable to expect there may be approximately 20,000 such objects to analyze just for Rimini  
8 Street's PeopleSoft updates.

9 Rimini Street has claimed that it independently develops software updates for Oracle  
10 software, separately for each of its customers, without using any Oracle material obtained on  
11 behalf of other customers. As noted above, on March 17, 2011, Oracle deposed Rimini Street  
12 pursuant to Fed. R. Civ. P. 30(b)(6) relating to six specified PeopleSoft tax and regulatory  
13 updates distributed by Rimini Street. That is, a seven-hour deposition covered only six of the  
14 more than 1,000 updates Rimini Street has distributed, *i.e.*, less than 1% of the updates. As  
15 Rimini Street's testifying executive, Ms. Beth Lester, made clear, in actuality, Rimini Street  
16 copies software from one client to another in the process of distributing Rimini Street-branded  
17 software updates. Rimini Street claims that the terms of each customer's separate license  
18 agreement with Oracle permit such copying. Rimini Street's practices and its assertion of a  
19 license defense therefore require Oracle to discover and examine the actual sources of the  
20 thousands of objects that Rimini Street distributes on a file-by-file basis, including which  
21 customer's Oracle software was used and copied in the process of creating updates and fixes for  
22 distribution. Oracle contends that this analysis will show that Rimini Street co-mingles its  
23 customers' software, engaging in "cross-use" of one customer's software to benefit another  
24 customer, which is not covered by any applicable license.

25 At her deposition, Ms. Lester also made clear that Oracle will have to examine numerous  
26 data sources, carefully review individual files of computer code, and perform complex technical  
27 analysis because "you cannot look at a tiny piece of the puzzle. You have to put it all together."  
28

1 Deposition of Beth Lester Pursuant to Fed. R. Civ. P. 30(b)(6) (“Lester 30(b)(6)”), March 17,  
2 2011, at 138:14-16. As described below, Rimini Street has not yet produced many of the puzzle  
3 pieces, and once they are produced, substantial time and deposition questioning will be necessary  
4 to put them together and prepare evidence for trial.

5 **i. Data Not Yet Produced**

6 Rimini Street’s HRMS Development network share contains files relating to development  
7 and distribution of tax and regulatory updates, and was first called for by Oracle’s April 29, 2010  
8 document requests. On February 10, 2011, after learning about the existence of the HRMS  
9 Development share from review of other documents produced by Rimini, Oracle requested that  
10 Rimini prioritize its production. Rimini initially opposed producing this material, producing  
11 only the material for the six fixes subject to Oracle’s Rule 30(b)(6) notice. On March 25, Rimini  
12 informed Oracle that it would produce the remainder of this material in April.

13 During the March 17 Rule 30(b)(6) deposition, Ms. Lester identified two additional stores  
14 of data that, she said, would need to be consulted to understand what Oracle software was used  
15 to create fixes and updates, and which customers received those fixes and updates. Oracle  
16 requested priority production of these additional data sources – known as HRMS Functional and  
17 HRMS Delivered – immediately after the deposition. Rimini has not yet confirmed it will  
18 produce these items. Presumably, it will take some amount of time to do so, and then further  
19 time to analyze them and depose witnesses about them.

20 **ii. Analysis Required After Data Is Produced**

21 Even with all the update-related data in hand, the work necessary to comprehend it and  
22 prepare to prove Rimini Street’s cross-use of software among customers is complex and time-  
23 consuming.

24 For example, analyzing the separate data in the HRMS Delivered file share is necessary  
25 to determine which customers ultimately received what files. Lester 30(b)(6) at 150:9-152:9. As  
26 Oracle’s expert explains, experts must perform multiple types of comparisons between similar  
27 data systematically to detect the extent of Rimini Street’s copying. *See* Hicks Decl. ¶¶ 17-22.

1 As another example, Rimini Street generates numerous documents in the process of  
 2 preparing and delivering each of its more than 1,000 fixes and updates.<sup>2</sup> According to Ms.  
 3 Lester, these documents are spread across various sources on Rimini Street's systems, such that  
 4 for each update or fix, there may be multiple (technical) documents in the DevTrack system, the  
 5 HRMS Development file share, and the HRMS Functional file share, all of which must be  
 6 examined to show which Oracle software was used in the process of distributing that one file.  
 7 Lester 30(b)(6) at 150:9-152:9. DevTrack alone may contain more than a dozen relevant pieces  
 8 of documentation per update delivered by Rimini Street to its customers. *See, e.g.*, Lester  
 9 30(b)(6), Ex. 90, at ORCLRSDT000006 to ORCLRSDT000007 (DevTrack record where Notes  
 10 and Events areas together reflect 16 pieces of attached documentation; attached as **Exhibit B**).  
 11 An example of just one such document is attached as **Exhibit B** to this statement.

12 Moreover, to understand and reconcile these various data sources for even a subset of  
 13 objects, Oracle will need to depose some of the developers, testers, and delivery personnel who  
 14 helped generate those fixes because each of these activities appears to involve, in different ways,  
 15 the use of one customer's software to support multiple other customers. In the event that Rimini  
 16 Street claims (as it has) that its development processes have changed over time, Oracle will need  
 17 to depose testers, developers and packagers whose experience spans those changes. Corporate  
 18 testimony may not be a viable substitute: in the recent Rule 30(b)(6) deposition, Ms. Lester had  
 19 reviewed voluminous data regarding the six specific fixes that were the subject of the deposition,  
 20 but still could not fully answer questions about what Oracle software Rimini Street used to  
 21 generate the various objects in those six fixes and deferred to the actual individuals involved.  
 22 *See, e.g.*, Lester 30(b)(6) at 13:4-14:14; *id.* at 206:1-207:9.

23 Analyzing all the documents for each of tens of thousands of objects, and conducting the  
 24 necessary depositions on each of them, may in fact be an impossible task, even if Rimini Street's  
 25 record-keeping were perfect and consistent. (Were Oracle to elect to analyze certain data for  
 26

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27 <sup>2</sup> Further, other copies of fixes and updates may be stored on Rimini employees' computers.  
 28 Hicks Decl. ¶ 36.



only a statistical sample for purposes of obtaining information about the overall population of copies made and distributed by Rimini Street, this approach would ultimately be more expedient, but would also take several additional months to complete.) In fact, this object analysis will be even more complex because Rimini Street's record-keeping is not consistent. Rimini Street took affirmative steps to systematically delete data that would have shown which customer's Oracle software was used to create the updates that Rimini Street distributes. Oracle has already identified at least 5,000 separate files for which Rimini Street deleted evidence that would show which specific Oracle software was used to create it. Hicks Decl. ¶ 38.

#### **b. Rimini Street's Mass Downloading**

A second set of issues in this litigation involves Rimini Street's downloading of Oracle software and support materials from Oracle's password-protected websites, including the use of automated programs to engage in mass downloading. Oracle contends, and the discovery to date shows, that Rimini Street copied Oracle software and support materials by downloading material from Oracle without permission and by using methods prohibited by the Oracle websites' terms of use. Discovery on these claims requires identification of which Oracle files Rimini downloaded, how, for what purpose, and using which customer's credentials.

#### **i. Data Not Yet Produced**

Rimini Street's client archives contain Oracle software and support materials that Rimini Street has copied, ostensibly on behalf of its customers. These materials relate to Oracle's claims that Rimini Street downloaded materials it had no right to have. The archives include over 22 terabytes of data, allocated among 200 Rimini customers – more than twice the entire written contents of the Library of Congress.

These archives are responsive to document requests served on April 29, 2010, and Oracle asked Rimini Street to prioritize their production on October 5, 2010. After several months of negotiations, production of related data, and review, Rimini Street has yet to produce a single customer's archive. Instead, it initially proposed to provide only restricted online access to certain locations on its system using a Virtual Private Network ("VPN"). Oracle agreed, but

1 reserved its rights to make targeted requests for production of the actual underlying data,  
2 recognizing that read-only VPN access permits a very limited range of analysis.<sup>3</sup> On December  
3 21, 2010, Rimini made available a single VPN log-in credential that could be used by one person  
4 at a time to access the archives. (Oracle later requested eight additional VPN log-ins to allow  
5 access to more than one person at a time, and Rimini agreed to provide four.)

6 After identifying a number of technical issues and limitations of VPN access, Oracle  
7 requested on January 27, 2011 that Rimini Street use a standard, open-source software tool  
8 (Karen's Directory Printer) to provide certain metadata about the archives, essentially  
9 comprising an index of the files: the names of all the files, sizes, how they are organized,  
10 associated dates, and MD5 hash codes (which provide unique identifiers for different files and  
11 identify duplicate files). This index would enable Oracle to identify specific material and issue  
12 targeted requests for production. Rimini Street reported that it required *four weeks* of computer  
13 processing time to create the index, and produced it on February 23, 2011. Oracle is analyzing  
14 the metadata index and creating requests for an initial production of client archives, expected in  
15 early April.

16 **ii. Analysis Required After Data Is Produced**

17 After Rimini produces the necessary data from its archives, Oracle will analyze this data  
18 to identify what materials Rimini copied, when, and using what customer credentials, which will  
19 require depositions of knowledgeable individuals to understand the data produced, followed by  
20 further expert analysis. Among the tasks, Oracle will compare the files to Oracle's own data  
21 sources, including log files with billions of entries containing legitimate access and downloading  
22 activity by Oracle's customers. Oracle will also compare the downloaded material to Oracle's  
23 registered works to identify specific files downloaded. Even with the aid of powerful computers  
24 and customized scripts, the sheer size of the archives, more than 22 terabytes, means that this  
25

26 \_\_\_\_\_  
27 <sup>3</sup> For example, with read-only VPN access, Oracle's experts cannot create copies of any the files  
28 within these archives that are necessary to identify similar files among different customers.  
Hicks Decl. ¶ 31.

analysis will take considerable time, more than is possible on the current schedule. Hicks Decl. ¶¶ 5-6.

Oracle also must analyze Rimini Street's automated mass downloading programs. Rimini produced certain of the source code on January 26, 2011, and Oracle will need to depose knowledgeable individuals to explain it, followed by expert analysis. Oracle's preliminary analysis shows that Rimini Street has used various automated tools over time, each of which will require separate analysis. Further, Oracle will likely need to take separate depositions focused on different Oracle products. For example, in his recent deposition, J.R. Corpuz, whose job includes downloading Oracle software for Rimini Street's PeopleSoft clients, claimed to have little knowledge of downloads performed for Siebel or J.D. Edwards clients. Deposition of J.R. Corpuz, March 15, 2011, at 22:23-23:11.

### **c. Rimini Street's Local Environments**

#### **i. Data Not Yet Produced**

Rimini Street's copies of Oracle software in the form of environments present a third set of issues. As noted above, environments are installed copies of Oracle software at issue in this litigation. Rimini Street maintains more than 200 complete copies of such environments, greater than 10 terabytes in size. The parties dispute whether Rimini Street may have any of these environments on its systems. Oracle also contends that Rimini Street improperly used environments supposedly maintained for certain customers to provide services to other customers.

As with the client archives, Rimini Street's client environments are responsive to document requests served by Oracle 11 months ago, on April 29, 2010. After a series of negotiations, Rimini Street produced a first set of environments (51 environments associated with twelve customers), totaling 2.5 terabytes, on February 11 and a second set of 21 environments associated with seven additional customers on March 3.<sup>4</sup> In total, in just under a year, Oracle has obtained environments for 19 customers, less than 10% of Rimini's customers.

<sup>4</sup> Specifically, on October 5, 2010, Oracle specifically offered to prioritize an initial subset for production if it would enable Rimini Street to make a production more quickly. Rimini Street



1 scope of the forensic investigation remains uncertain pending production of the folder, but will  
2 likely take substantial time.

### 3 **3. Oracle Has Diligently Produced Its Own Data**

4 Rimini also attacks Oracle for delaying its production. This is a red herring for two  
5 reasons, and wrong besides.

6 First, Rimini compares the size of its production to Oracle's. As the infringer -- the party  
7 with admittedly now millions of Oracle's files on its systems -- it should come as no surprise that  
8 Rimini has more to produce. Oracle is alleged to have done nothing wrong (other than allegedly  
9 making a defamatory statement) and comparatively has much less to produce.

10 Second, Oracle's production has no bearing whatsoever on the question of whether the  
11 current schedule permits adequate discovery from Rimini. Notably, Rimini disclaims any  
12 prejudice, admitting in footnote 10 that Oracle's production of its documents and data is fully  
13 consistent with the existing schedule (and seeks no relief for the allegedly dilatory tactics).

14 Third, Rimini is just wrong. Oracle is one of the world's largest companies, and in this  
15 action is producing documents from custodians literally around the globe from a vast array of  
16 technical systems. For example, contrary to Rimini's allegation, Oracle has produced the vast  
17 majority of its licenses, totaling thousands of pages. What remains (which will be produced  
18 within one week) are additional licenses for *new* customers identified recently by Rimini, and a  
19 handful of license-related documentation not as readily identifiable due to name changes and  
20 access to legacy systems. In the meantime, Oracle has prioritized other aspects of its productions  
21 in response to Rimini's requests, including terabytes worth of internet log files, terms of use for  
22 Oracle websites, and a substantial amount of discovery (including depositions, with exhibits)  
23 relevant to this case from *Oracle v. SAP*. Oracle has further produced Oracle's copyrighted  
24 software, documents relating to the ownership and authorship of that software, certificates of  
25 copyright registration, deposit materials, and many voluminous Excel spreadsheets (each of  
26 which counts as a single "page").

#### 4. Status and Number of Depositions

The current status of depositions, and the material needed to conduct them effectively, further confirms the need for an extension of the schedule.

As with the data issues summarized above, the production status of more traditional discovery subjects – such as Rimini custodians’ e-mails remains in its early stages. The parties spent several months negotiating the contours of Rimini Street’s production, including identifying a limited set of custodians and keywords. These negotiations concluded on January 18, 2011. The parties agreed to keywords for Oracle’s production several weeks later, on February 9. As a result, Oracle has deferred most depositions except for foundation Rule 30(b)(6) depositions pending production of documents and data.<sup>5</sup>

Rimini Street has confirmed that it has finished production for only one of its custodians, J.R. Corpuz, whom Oracle deposed shortly after Rimini Street produced the last of his documents. Rimini Street also recently confirmed that productions for two other individuals are “substantially complete.” While Rimini Street has produced a significant volume of documents and data, it has yet to produce the vast majority for many key employees. For example, Rimini Street has produced just two documents from the files of Beth Lester, its vice president in charge of support services for its PeopleSoft customers, whom it produced as its Rule 30(b)(6) witness on March 17. And Rimini Street has produced only four documents from the files of George Lester, its vice president who oversees its IT organization and manages all software development for PeopleSoft, J.D. Edwards, and Siebel. Both Beth and George Lester were early Rimini Street employees who joined the company in 2006 from TomorrowNow and who likely have thousands of responsive documents. For the Lesters, and for other employees, depositions currently await the production of pertinent documents.<sup>6</sup>

<sup>5</sup> Oracle has taken four depositions to date: a 30(b)(6) deposition concerning Rimini’s computer system and preservation efforts; a 30(b)(6) deposition concerning a high-level overview of Rimini’s business processes; the recent 30(b)(6) deposition concerning six specific PeopleSoft fixes and five environments, and a deposition of Rimini Street downloader J.R. Corpuz.

<sup>6</sup> In addition, certain errors in Rimini Street’s production have hindered Oracle’s ability to analyze the custodial documents. For example, Rimini Street produced documents with blank spaces, which originally contained pictures of screenshots or other images. From the context of

1 The challenges of the scope and complexity of discovery described above also require  
 2 more depositions than the twenty the current case management order allows. As explained  
 3 above and in the Declaration of Christian Hicks, Oracle's experts need deposition testimony to 1)  
 4 interpret the complex and diverse data being produced and 2) explain its role in the context of  
 5 Rimini's business processes. Oracle's deposition proposal, broken down by category, is as  
 6 follows:

7 **Downloaders:** Oracle took the deposition of J.R. Corpuz, who has engaged in  
 8 downloading of PeopleSoft materials. Mr. Corpuz testified that different employees conduct  
 9 downloading for each of Rimini Street's other service offerings, relating to Oracle's J.D.  
 10 Edwards and Siebel software. Thus, Oracle requires at least two more depositions, one for each  
 11 product line.

12 **Support and Updates:** Oracle will requires at least one deposition for each of the three  
 13 service offerings (PeopleSoft, J.D. Edwards, and Siebel) to address how Rimini Street provides  
 14 support and product updates.

15 **PeopleSoft Developers, Testers and Packagers:** With respect to the PeopleSoft product  
 16 line only, Rimini Street has identified over 270 local environments and over 1,000 fixes,  
 17 comprised of potentially tens of thousands of individual code files (see generally, discussion  
 18 above). Given the volume at issue, which involves potentially tens of thousands of individually  
 19 modified or generated computer files, Oracle proposes to depose at least ten developers, testers  
 20 and/or packagers regarding Rimini Street's PeopleSoft software services.<sup>7</sup>

21  
 22 the documents, Oracle determined that the missing images in many instances depicted Oracle's  
 23 systems, Rimini Street's downloading tools, and other relevant items. Oracle first alerted Rimini  
 24 Street to this problem on March 2. Rimini Street is still working with its vendor to correct this  
 25 problem across its entire production. In the interim, Oracle has identified individual flawed  
 documents and submitted piecemeal requests for replacements – a time-consuming and  
 inefficient process.

26 <sup>7</sup> Because Oracle initially has focused on PeopleSoft services, Oracle has less information about  
 27 Rimini's J.D. Edwards and Siebel services. While Oracle does not yet have good cause to ask  
 28 for additional depositions regarding J.D. Edwards and Siebel software, Oracle may later request  
 additional depositions related to these product lines as related discovery matures. For now,  
 Oracle includes 2 depositions for each product line as a placeholder.



1           **PeopleSoft Environment Builders:** The developers and testers do not create the  
 2 environment copies – Rimini Street assigns that task to a separate department. Ms. Lester could  
 3 not give reliable testimony about the sources and uses of just five environments that were the  
 4 subject of the Rule 30(b)(6) notice. Oracle thus proposes to take two depositions of Rimini  
 5 Street’s environment-building team solely as to PeopleSoft environments.

6           **Sales:** Oracle anticipates four depositions of members of Rimini Street’s sales  
 7 organization, who recruit customers with representations about Rimini’s business model. This is  
 8 important evidence on causation as well as Rimini Street’s counterclaim for defamation and  
 9 trade libel.

10           **Other Executives:** There are a small number of executives at Rimini Street not covered  
 11 within the categories above, such as Mr. Ravin himself. We estimate at least four total  
 12 depositions.

13           **Rimini Street Competitors:** Rimini Street has identified three competitors that it claims  
 14 would have gained these customers if Rimini Street had not, an attack on causation and damages.  
 15 Both Oracle and Rimini Street have issued document subpoenas to each of these companies  
 16 (NetCustomer, Spinnaker Support, and CedarCrestone). Oracle anticipates at least one  
 17 deposition for each company.

18           **Rimini Street Investors:** Rimini Street had detailed negotiations with at least one  
 19 investor, Adams Street Partners, regarding its practices with respect to Oracle’s intellectual  
 20 property. This investor will provide important testimony on liability issues, and its financial  
 21 analysis relates to damages. Oracle proposes a single deposition.

22           **Customers:** Customers will provide critical liability, causation, and damages testimony  
 23 in this case. Unless Rimini will agree now not to argue that its customers (1) left Oracle for  
 24 reasons other than Rimini’s service offering; and (2) would not have left had they know that  
 25 Rimini’s service offering was illegal (assuming that is proved), then Oracle must ask the  
 26 customers those questions directly. Even so, it is impossible to ask all of them, and Oracle  
 27 proposes nothing of the sort. Rimini Street has had more than 300 customers for services  
 28

relating to Oracle products, most of which have been subpoenaed and have provided important documents. The parties in the recent *Oracle v. SAP* case kept these depositions short and focused. Rather than set a number, Oracle proposes that each side have a total of 50 hours of customer deposition time to divide at each party's discretion. That would allow, as an example, for Oracle to take 20 depositions of two-and-a-half hours each. Those 20 would represent less than ten percent of the Rimini Street customer base.

The table below summarizes the proposed depositions by category as compared to the number of individuals filling the relevant role at either Rimini Street or the relevant entity.

Category	Proposed Depositions	Number of Individuals
Downloaders	3 (1 PeopleSoft, 1 J.D. Edwards, 1 Siebel)	At least 5
Support and Updates	3 (1 PeopleSoft, 1 J.D. Edwards, 1 Siebel)	More than 50
PeopleSoft Developers, Testers and Packagers	10	At least 25
PeopleSoft Environment Builders	2	At least 5
J.D. Edwards and Siebel Developers, Testers, Packagers and/or Environment builders	3	At least 12
Sales	4	At least 12
Other Executives	4	At least 12 (senior executives)
Rimini Street Competitors	3	3 companies with more than 2000 combined employees
Rimini Street Investors	1	At least 4
Customers	50 hours total	More than 300 past or present business customers for PeopleSoft, J.D. Edwards, and Siebel services
Total	33 depositions + 50 hours of customer depositions	Approximately 180 total Rimini Street employees, 3 identified competitors, and more than 300 business customers

## 5. Discovery Schedule

The discovery challenges in this action do not result from inefficient discovery or unnecessary discovery squabbles. To the contrary, the parties have worked well together to address their respective concerns and to stage discovery in a sensible manner. However, as described above, this process has revealed that much more needs to be done, and the parties have not made the progress necessary (nor could anyone reasonably expect that they could have, given the volume) to meet the current schedule.

Given the remaining work, despite the parties' diligence in the discovery process so far, an extension is warranted pursuant to Fed. R. Civ. P. 16(b)(4). *See also* Local Rule 26-4. Specifically, Oracle proposes the revised discovery schedule below. The need for these schedule modifications exists regardless of whether the Court orders additional depositions at this time, for the reasons given above regarding the status of production and time needed for analysis.

	Current Schedule	Oracle Proposal
Last date to complete fact discovery	August 1, 2011	February 17, 2012
Last date to file motions to compel related to fact discovery	August 15, 2011	March 9, 2012
Last date to amend pleadings and add new parties	June 1, 2011	August 1, 2011
Last date to disclose experts on issues for which a party has the burden of proof, pursuant to Fed. R. Civ. P. 26(a)(2)	September 1, 2011	April 6, 2012
Last date to disclose rebuttal experts	October 15, 2011	May 31, 2012
Last date to complete expert discovery	December 1, 2011	July 9, 2012
Last date to file dispositive motions	January 15, 2012	September 21, 2012
Last date to file joint pretrial order	February 15, 2012	November 16, 2012

## 6. An Extension of the Current Schedule and Deposition Limits Will Not Unfairly Prejudice Rimini Street but the Absence of These Extensions Would Prejudice Oracle

A schedule extension will not unfairly prejudice Rimini Street. The parties' inability to complete necessary discovery on the current schedule arises from the technical complexity and scope of the issues in the litigation. Further, granting an extension will permit Oracle to continue

1 to minimize Rimini Street's production burdens through phased and targeted discovery requests,  
2 as Oracle has done so far. A more abbreviated schedule likely forces Oracle to demand full and  
3 immediate production of the entirety of the data it needs.

4 This is not a case where one party is hounding the other with unreasonable and  
5 oppressive discovery demands. To the contrary, the fact that the parties, without the intervention  
6 of the Court, have resolved between themselves every single discovery dispute that has arisen  
7 between them over the last six months illustrates the parties' effective and cooperative work to  
8 minimize the burdens of the litigation while still moving forward quickly.

9 That cooperation does not change the fact that Rimini Street has copied massive amounts  
10 of Oracle software and support materials. That widespread conduct requires more time for  
11 discovery and analysis. Further, the copyright claims here involve complex software code and  
12 related data, not a book or a movie. That it takes a lot of time and work to analyze that sort of  
13 information is not unfair to either party – it is simply a fact of this case. Moreover, Rimini  
14 Street's defenses, such as asserting that the circumstances for each of the more than 1,000 fixes  
15 will vary enough to require a separate analysis of each, necessarily implicate extensive  
16 discovery. Oracle of course agrees that Rimini Street may assert all of the defenses that it  
17 believes appropriate – but it cannot assert those defenses and then deny Oracle the discovery  
18 necessary to test them.

19 For similar reasons, adhering to the current schedule and depositions limits *would*  
20 prejudice Oracle. Rimini made these copies, and then in many instances covered up crucial  
21 evidence that would establish the facts showing its liability. The massive copying at issue  
22 requires more time to analyze than Oracle has available under the current schedule. Already,  
23 regardless of what the Court orders, Oracle has insufficient time comprehensively to analyze all  
24 of the copies Rimini made, using all of the sources where Rimini stores them. That unfairness  
25 exists in the case and always will. However, to mount an effective damages case that accounts  
26 for what Rimini did, Oracle at least must have sufficient time and tools to investigate by product  
27 line, by exemplar copy, by category of conduct, and by example customers. That minimum  
28

discovery will allow Oracle to extrapolate to the totality of Rimini's conduct in support of Oracle's damages analysis. The alternative would allow Rimini to run out the clock on Oracle's analysis, and would prevent a hearing on the merits of Oracle's claims.

#### **B. Rimini Street's Position**

If Oracle exercised as much diligence in meeting the Court's scheduling order as it exercises in its attempt to modify that schedule, it would not need to delay the close of fact discovery by over six months. From the very beginning of the Court's careful consideration of the schedule in this case, Oracle has been prophesying the need for a longer schedule.<sup>8</sup> Oracle has been managing its case from the beginning with an eye toward creating a self-fulfilling prophecy. But this is tantamount to flat-out ignoring the Court's carefully considered schedule. Put another way, Oracle should not be allowed to predict that the Court's schedule will be insufficient, exert little diligence to meet the ordered schedule, and then outline all the things it knows about but has not done as a means to bring its prediction into reality.

This is the very reason Oracle must show "good cause" to modify the Court's schedule, and Oracle has not met that standard. "Federal Rule of Civil Procedure 16(b)(4) and LR 26-4 allow the Court to modify a scheduling order only upon a showing of good cause." *Amos v. Makita U.S.A., Inc.*, 2011 U.S. Dist. LEXIS 2729 (D. Nev. Jan. 6, 2011). The good cause standard primarily considers the diligence of the party seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). If the moving party was not diligent, the inquiry should end. *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th

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<sup>8</sup> See, e.g., Doc. No. 51 at 7 ("Rushing to squeeze the same amount of discovery into a shorter period risks inefficiency, waste, and expense. There is nothing to be gained by haste, particularly if a short schedule leaves the parties likely back before the Court requesting an extension."); Doc. No. 98 at 18 ("Oracle submits that regardless of which Party's proposal the Court may adopt for limits on discovery, it is prudent and indeed necessary in this case to allow adequate time for the collection and analysis of complex discovery by counsel and by experts."); Doc. No. 118 at 3 ("Given the scope of the case, the technical nature of the disputes, and the time it has taken to make these materials available for preliminary inspection, Oracle contends that it will be a challenge to complete the necessary discovery on the schedule set by the Court, but is committed to continuing the parties' diligent and cooperative work to attempt to meet that challenge.")

1 Cir. 2002); *Johnson*, 975 F.2d at 609. Here, Oracle has failed to show either that the present  
2 deadlines cannot be reasonably met or that it proceeded diligently to meet those deadlines.

3 As represented at the outset of this case, Rimini Street has cooperated with Oracle's  
4 demands. What Oracle has asked for, it has received in a timely manner. Plenty of time remains  
5 in discovery for the parties to *reasonably* explore the full merits of the dispute. Now, it is  
6 certainly true that Oracle could (and has attempted to do so in its submission) describe a level of  
7 analysis that would be impossible to complete in any reasonable period of time. But, again,  
8 Oracle must make diligent efforts to tailor its case to the Court's schedule, not unilaterally tailor  
9 the Court's schedule to support the most complex analysis Oracle can concoct. The Court's  
10 scheduling plan is working well, and there is no reason to interfere with the parties' progress.  
11 The present schedule is more than adequate to allow full discovery into the merits of the claims  
12 in this case, and Oracle's request to modify the Court's discovery plan should be denied.

### 13 **A. Discovery Efforts To Date**

14 Discovery commenced in this matter on April 29, 2010 following the parties' Rule 26(f)  
15 conference. During this conference, the parties conferred regarding their competing discovery  
16 proposals, which were ultimately reflected in the parties' Stipulated Discovery Plan. Doc. No.  
17 51. Of note, Oracle requested a fact discovery deadline of August 1, 2011, while Rimini  
18 requested a fact discovery cutoff of April 29, 2011. *Id.* at 15-16. On June 1, 2010, the Court  
19 conducted a case management conference during which the parties presented their competing  
20 discovery proposals. Following the conference, the Court took the competing discovery  
21 proposals under advisement and ordered the parties to conduct "foundation discovery" before the  
22 next status conference. Doc. No. 62. That next scheduling conference was held on August 5,  
23 2010, where the parties again discussed their discovery proposals. Doc. No. 77. Following this  
24 conference, the Court issued a Minute Order stating, "Court is inclined to set concrete discovery  
25 deadlines, but not until after counsel have made additional progress with their foundational  
26 discovery, after establishing the universe of material they need, and after determining what  
27 discovery disputes, if any, counsel may have." Doc. No. 77. After continuing with such  
28

1 foundational discovery for over another month, a further conference was held on September 10,  
2 2010. Following this hearing, the Court entered what was obviously a carefully considered  
3 scheduling order on September 21, 2010, adopting Oracle's fact discovery deadline of August 1,  
4 2010 and limiting the number of depositions to 20 per side.

5 Armed with extensive foundational discovery, Oracle made a number of priority  
6 discovery requests in a letter dated October 5, 2010. Of note, this letter requested prioritization  
7 of various major data sources, including Rimini's customer archives, customer environments,  
8 DevTrack platform and other large log files. During a meet-and-confer on October 25th, Rimini  
9 proposed a detailed production plan for each of the data sources requested by Oracle. While the  
10 parties negotiated the technical details of these massive productions, Rimini began making its  
11 productions on a rolling basis. For instance, various log files were produced in November, and  
12 Rimini produced its FTP server in December of 2010. Rimini also provided Oracle VPN access  
13 to its customer archives and DevTrack platform in December of 2010.

14 On December 14, 2010, Oracle provided Rimini with its initial list of requested customer  
15 environments. Within two months of receiving Oracle's priority list, Rimini produced over fifty  
16 environments – an enormous amount of data. Oracle requested another twenty-two  
17 environments on February 3, 2011, and Rimini made responsive productions on March 2.

18 On February 10, 2011, Oracle requested the production of development files from Rimini  
19 HRMS Development network share. Rimini made its initial production of this material less than  
20 two weeks later. While Rimini continues to process the remaining development files, it expects  
21 to make a complete production by the end of March. Further, while Oracle has requested the  
22 production of the two additional folders from the HRMS Development network share, Rimini  
23 has already confirmed to Oracle that it expects to have this material ready for production in  
24 April.

25 In addition to addressing promptly Oracle's numerous requests for non-custodial data,  
26 Rimini has also produced nearly 1.5 million Bates-stamped pages and nearly 2,800 native files.  
27 It produced over 200,000 more pages of priority custodian documents this week, and expects to  
28



1 have produced well over 1.6 million Bates-stamped pages by the end of March. In early April,  
 2 Rimini expects to produce another substantial volume of priority custodial documents, which  
 3 will likely bring Rimini's total production to over two million pages.

4 **B. The Court Should Not Modify Its Scheduling Order.**

5 After extensive briefing and an extended period of "foundational" discovery, the Court  
 6 entered its scheduling order on September 21, 2010, *inter alia*, adopting Oracle's proposed  
 7 August 1, 2011 deadline for the close of fact discovery. Since that time, Rimini Street has  
 8 demonstrated its ability to conduct discovery quickly and efficiency. As noted, *infra*, Rimini has  
 9 worked cooperatively with Oracle to address Oracle's numerous demands, and by December  
 10 2010 Oracle had a tremendous volume of the data relevant to its various allegations, including: a  
 11 list of each of Rimini's customer environments; access to Rimini's complete customer archives;  
 12 every software update and fix Rimini has ever created; and access to Rimini's entire  
 13 development platform, which contains detailed records regarding the development of Rimini's  
 14 software updates and fixes. By March 2, 2011, Rimini had finished its production of the 71  
 15 customer environments requested by Oracle. At present, Rimini has confirmed its intent to  
 16 produce the materials responsive to Oracle's pending requests for non-custodian data by the end  
 17 of April.<sup>9</sup>

18 Given Rimini's discovery efforts, Oracle cannot point to any discovery materials that  
 19 have not been timely produced in response to its requests. As such, Oracle's request to extend  
 20 the schedule necessarily focuses on the purported complexity of Oracle's analysis. But Oracle  
 21 has not demonstrated (a) that it cannot meet the present deadlines; (b) that it cannot take a more  
 22 streamlined approach to analysis; and (c) that it has been diligent in attempting to meet the  
 23 existing schedule. Put simply, Oracle cannot satisfy its "good cause" burden.

24  
 25  
 26 \_\_\_\_\_  
 27 <sup>9</sup> As one exception, Oracle requested the contents of Rimini's "internal software" folder within  
 28 the last week. Rimini has not yet had sufficient time to investigate when it will be in a  
 position to produce this material, to the extent it still exists.

**1. Oracle's Delay Arguments Are Unsupported.**

Attempting to support its proposed extension, Oracle points to certain data that allegedly has not yet been produced by Rimini. For instance, Oracle asserts that Rimini has not produced files from its customer archives. In fact, Oracle has had continuous access to the customer archives since December but has not requested the production of a single file. What Oracle has requested, it has timely received. Oracle points to the fact that Rimini has produced environments for only ten percent of its customers. In fact, Rimini produced each of the environments Oracle has requested, and Oracle has made no requests for additional environments since February 3. What Oracle has requested, it has timely received. Oracle indicates that it still must analyze the source code from Rimini Street's automated downloading programs. Rimini produced this code in January 2011 at Oracle's request. Here again, what Oracle requested, it has timely received. Any delay in discovery or analysis rests with Oracle, not Rimini.

Oracle also suggests that delays in Rimini's document productions will prevent it from finishing its depositions within the allotted time frame. The record demonstrates otherwise. As previously mentioned, Rimini has produced nearly 1.5 million Bates-stamped pages and nearly 2,800 native files. In producing these custodial documents, Rimini has demonstrated its ability to prioritize certain custodial productions over others at Oracle's request, such that depositions may be expedited as necessary. For instance, Oracle requested that Rimini prioritize the production for Mr. Corpuz in advance of his deposition. Rimini completed its production of Mr. Corpuz's documents on February 23, 2011 – barely two weeks after Oracle requested Rimini prioritize this custodian's documents. In another example, Oracle requested various documents on February 10, 2011 in connection with Oracle's Third Notice of Deposition. These files were promptly produced on February 23, 2011. These are but a few examples. Rimini has prioritized a number of other custodial productions at Oracle's request, and Rimini will continue to do so in a similarly quick fashion.

**2. Oracle Has Not Demonstrated Diligence.**

Oracle is dragging its feet. It is slow to request information as described above, and it is slow to produce information when requested to do so. Indeed, while Rimini has produced over 1.5 million Bates-stamped pages, Oracle has produced only about 200,000. Even what productions Oracle has made have been rife with delay. For instance, Rimini has yet to receive all of the customer contracts it requested in its initial “foundational” requests for production of May 13, 2010. Obviously, these contracts are of the utmost relevance to Oracle’s contract claims and Rimini’s license defenses. It is difficult to comprehend how these customer contracts could take nearly a year to locate and produce. In fact, Rimini provided Oracle with a customer list on September 8, 2010 to assist in the identification of customer contracts, but Oracle has yet to produce the highly relevant licenses for even the customers on that list. This is not complicated and does not require a multi-page expert declaration to explain – there is a specific list of customers whose contracts are pertinent, and production was requested approaching a year ago. Yet, Rimini Street waits.

In another example of Oracle’s lack of diligence, Rimini’s Interrogatory No. 3 requests that Oracle identify “each instance in which Defendants' alleged acts caused an Oracle Computer to ‘freeze, slow down, or become temporarily non-operational’” as alleged in Oracle’s First Amended Complaint. This was another “foundational” discovery request that is obviously highly relevant to Oracle’s claims of damage to its servers. Rimini has repeatedly requested that Oracle supplement its response to this interrogatory, indicating that such a supplementation will be necessary in advance of depositions that have already been noticed by Rimini. Though Oracle agreed to supplement its response as recently as February 23, 2011, Oracle apparently does not intend to provide the requested supplementation until the middle of April, almost ten months after the interrogatory was originally propounded. Again, very little complexity exists here – Oracle alleged instances of computer damage, Rimini Street asked for an identification of those instances. Yet, Rimini Street waits.

1 Oracle's discovery has consistently lagged Rimini's in timing, quantity, promptness of  
 2 supplementations to written discovery, and in responsiveness to prioritization requests. Such  
 3 behavior does not indicate diligence. As the Ninth Circuit has noted, if the party seeking  
 4 modification of the scheduling order was not diligent, the inquiry should end. *Zivkovic*, 302 at  
 5 1087. Oracle has and continues to move slowly. And Oracle cannot use the outcome of its  
 6 tactics as evidence of "good cause."

### 7 **3. The Court's Schedule Is Appropriate.**

8 Rimini, for its part, has consistently expressed its desire to resolve this case on its merits  
 9 rather than by attrition. Rimini has kept up its end of the bargain – its cooperative approach to  
 10 discovery demonstrates that compliance with the Court's schedule is realistic. Despite Oracle's  
 11 doom and gloom assessment, the Court's discovery plan is working exactly as intended, at least  
 12 for Oracle's discovery into its claims.<sup>10</sup> Four full months remains in fact discovery. Oracle has  
 13 received and is receiving the documents and evidence it has requested. Oracle is using those  
 14 documents to take depositions of Rimini witnesses. If Oracle continues on current pace, it can  
 15 readily take the remainder of its depositions in four months. Oracle has indicated that it has  
 16 turned up evidence in discovery relating to databases, and that it intends to amend its complaint.  
 17 The Court's schedule is working since the deadline for such amendments is June 1.

18 Now, Oracle attempts to justify abandoning the Court's schedule by arguing that its team  
 19 of at least eleven forensic computer experts needs another eight months to *analyze* Rimini's data.  
 20 In point of fact, Oracle is now focusing on the time its experts purportedly need to analyze the  
 21 data that Rimini has and will produce. If Oracle's cadre of experts work diligently with the data  
 22 in their possession, the Court's schedule would give them five more months before expert reports  
 23 are due on September 1. Oracle has five months remaining and virtually limitless resources. It  
 24 should use those time and resources to meet the Court's schedule, rather than using those time  
 25 and resources to justify abandoning it.

26 \_\_\_\_\_  
 27 <sup>10</sup> In all candor, Oracle must pick up the pace of its responsiveness for Rimini Street to be able to  
 28 complete its discovery. However, Rimini Street expects Oracle to do so, and if that  
 occurs, Rimini Street will do what needs to be done to meet the existing deadlines.

**C. Oracle's Request to More than Double the Number of Depositions Should Also be Rejected.**

Oracle also requests the Court expand the number of allotted depositions from the current limit of 20 to over 50 depositions. In Oracle's chicken-or-the-egg analysis, does its request for 50 depositions justify an extended schedule, or does the extended schedule permit Oracle to take 30 additional (and likely unnecessary) depositions? Either way, the entire amalgamation of Oracle's requests are unjustified, and, if granted, would serve only to impose unnecessary and duplicative burdens on Rimini and potentially dozens of non-parties.

Oracle has not demonstrated "good cause" for adjusting the deposition limit. The present limit of 20 depositions set by the Court appropriately requires the parties to avoid duplication in selecting the witnesses they choose to personally depose. Oracle's new deposition proposal, however, would eliminate the need for such selectivity by allowing duplicative depositions from various categories of Rimini employees. For instance, Oracle seeks 10 depositions of employees working in Rimini's PeopleSoft development organization alone. Oracle makes no effort to explain what unique information it expects to learn from 10 separate individuals *working in the same department*. Such overly broad proposals litter Oracle's proposed deposition modification, consistently seeking 3 to 4 depositions of similarly situated Rimini deponents. Even worse, Oracle requests 20 (or more) depositions of Rimini's customers. To be clear about Oracle's tactics here, Oracle has already systematically subpoenaed over 200 of Rimini's customers with subpoenas requesting the exact same documents. Oracle appears to be on a crusade to burden every single one of Rimini's customers even though they all have essentially the same information. Oracle's tactics, while ostensibly discovery related, suggest a different purpose. Now, Oracle wants to extend its crusade to what are sure to be duplicative depositions. Oracle should get the discovery it needs from exemplary customers, but the Court should not facilitate Oracle's non-discovery goals by enabling another rampage through Rimini's customer list.

And such is precisely the undesirable result that stems from Oracle's hours-based approach to deposition limits. For instance, Oracle's request for an unfettered 50 deposition

hours would allow Oracle to take dozens of customer depositions all over the country. Oracle itself suggests it will take 20 such depositions at two-and-a-half-hour each. The business interruption and legal expense associated with such proposed depositions simply cannot be justified, and Oracle fails to explain the specific and unique information it would hope to glean from these disparate customer depositions. This Court has already considered a similar proposal in rejecting Oracle's request for a bare limit of 200 deposition hours. And even then, Oracle was granted over twice the number of depositions contemplated by the Federal Rules. Oracle has not demonstrated why it needs an additional twenty or more depositions directed solely at Rimini's customers, or why such depositions would not be duplicative of depositions Oracle can take within the current deposition limit.

Oracle's request to substantially increase the number of allowed depositions is unsupported by "good cause." Oracle has taken only four depositions. Three additional depositions notices are currently pending for Rimini employees in April and May. Even after these depositions are concluded, Oracle will have 13 depositions remaining. Oracle should, as the Court's scheduling order contemplates, select 13 additional witnesses that possess exemplary information. Oracle does not need and should not be allowed to seek the same information from multiple witnesses. Such scorched-earth tactics have no legitimate place. The Court should instruct Oracle to comport with the scheduling order.

Dated: March 25, 2011

BOIES, SCHILLER & FLEXNER LLP

SHOOK, HARDY & BACON LLP

By: /s/ Kieran P. Ringgenberg  
 Kieran P. Ringgenberg (*pro hac vice*)  
 1999 Harrison Street, Suite 900  
 Oakland, CA 94612  
 Telephone: (510) 874-1000  
 Facsimile: (510) 874-1460  
 kringgenberg@bsfllp.com

By: /s/ Robert H. Reckers  
 Robert H. Reckers (*pro hac vice*)  
 600 Travis Street, Suite 1600  
 Houston, Texas 77002  
 Telephone: (713) 227-8008  
 Facsimile: (731) 227-9508  
 rreckers@shb.com

*Attorneys for Plaintiffs*

*Attorneys for Defendants*

**ATTESTATION OF FILER**

The signatories to this document are myself and Robert Reckers and I have obtained Mr. Reckers's concurrence to file this document on his behalf.

Dated: March 25, 2011

BOIES, SCHILLER & FLEXNER LLP

By: /s/ Kieran P. Ringgenberg  
Kieran P. Ringgenberg (*pro hac vice*)  
1999 Harrison Street, Suite 900  
Oakland, CA 94612  
Telephone: (510) 874-1000  
Facsimile: (510) 874-1460  
kringgenberg@bsflp.com

*Attorneys for Plaintiffs*